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The Conglomerate: Labor's Reactions and Remedies

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THE CONGLOMERATE: LABOR'S REACTIONS AND REMEDIES

"The progress of human society consists . . . in . . . the better and better apportioning of wages to work."[1]

I. INTRODUCTION

It would be a vast understatement to say organized labor is merely aware of the recent tidal wave of conglomerate mergers that has swept the American business scene. Its concern is deep and founded on what labor feels is the best of reasons, its self-interest. The concern over conglomerates is graphically demonstrated by a casual survey of the recent literature published by organized labor. One finds such titles as: "The Conglomerate: Corporate Octopus,"[2] "Bargaining With an Octopus,"[3] "A Merger of All Industry In One Vast Corporation?,"[4] and "The Merger Threat."[5]

Historically no one voice has spoken for labor. It is generally conceded that the development of labor cannot be characterized as one of uniformity and cohesiveness.[6] On any single subject it is difficult to determine with exactitude *the* opinion of organized labor. One can draw only general conclusions from specific statements of labor leaders and articles in various labor publications.

This comment is directed to such an appraisal of organized labor's attitude toward the conglomerate merger and the new aspects of management that the conglomerate creates. An attempt will be made to resolve the problems that change inevitably creates by analyzing the effects on labor-management relations the conglomerate corporation portends. Should conglomerate management be countered by conglomerate unions?

II. LABOR'S OPINION EXPLORED

The following is an excerpt from a statement made by Einar O. Mohn,

[1] T. CARLYLE, PAST AND PRESENT 25 (R.D. Atlick ed. 1965).

[2] MacDonald, *The Conglomerate: Corporate Octopus*, AFL-CIO AMERICAN FEDERATIONIST, Feb., 1969, at 17.

[3] Goodfader, *Bargaining with an Octopus*, IUD (Industrial Union Department) AGENDA, Jan., 1967, at 27.

[4] Labor, Sept. 30, 1967, at 8, col. 1.

[5] United Paper, Aug., 1968, at 2, col. 1.

[6] The IUD AGENDA, an AFL-CIO publication, recently described labor's past history as being characterized by "long-time rivalries and suspicions among unions, factors which were sometimes as divisive as the best efforts of the corporation." Conway, *Coordinated Bargaining . . . 'Historical Necessity,'* IUD AGENDA, Jan.-Feb., 1968, at 22.

Vice President of the International Brotherhood of Teamsters and Director of the Teamsters' Western Conference. It was issued as an expression of the Teamster attitude toward conglomerate mergers and seems representative of the general reaction of organized labor toward conglomerates:

> While it does not oppose industrial conglomerates the Teamsters Union recognizes that they pose many challenging problems both to unions representing the workers involved and to appropriate agencies of the federal government.
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> Any amalgamation of several companies by one corporate interest, even though individual company identities may be retained, is bound to be disruptive to the accustomed manner in which a union now bargains for workers in a specific industry. Such acquisitons or consolidations also are certain to involve the National Labor Relations Board and the National Mediation Board, requiring alterations in their procedures in determining bargaining units, proper jurisdictions, and the adjudication of unfair labor practice cases.
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> . . . .
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> Also, each of these unions would bring under the conglomerate tent contracts that differ in many respects. . . . Solving the multiplicity of problems incubated by such a conglomerate could be a monumental task.[7]

It is significant that Mohn's statement does not reflect diametrical opposition to conglomerates. A conglomerate merger actually could benefit union activity. A company, for example, with a tradition of resisting unionization could be acquired by a conglomerate with a more liberal labor policy. With that management not being hostile to organized labor, the corporation could be unionized and, clearly, no union could object to such an acquisition.

Mohn's statement seems representative of labor's general belief that conglomerate management will not likely conform to the present collective bargaining structure. Labor views the conglomerate as a threat because it presents a management form with which labor has had no experience. The collective bargaining system was developed within the framework of traditional forms of labor and management. Reciprocal relationships have developed based on these forms. It is believed that if these relationships were changed, it could have an impact on the delicate balance of collective bargaining power. Rather than lose any bargaining power because of an advantage created by management through bargaining in an untraditional form, labor insists on changes in the system.

I. W. Abel, President of United Steel Workers, stated that "if this phenomenon [of conglomerate merger] continues unregulated by the courts or by new legislation . . . and if merging of large corporations results in substantive changes in the corporate system, it may well be that our labor policy will have to be revised."[8]

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[7] Statement by Einar O. Mohn, issued in Burlingame, California, Oct. 17, 1969.

[8] Address by I.W. Abel, Association of American Editorial Cartoonists Annual Convention, in Washington D.C., May, 1968, as reported in Steel Labor, June, 1968, at 9, col. 1.

III. New Aspects of Management

A. Diversification and the deep pocket

A conglomerate is more than a corporation that has grown in size. The essential difference between bigness and conglomeration was expressed before the Senate Antitrust and Monopoly Subcommittee by Dr. Walter Adams, Professor of Economics, Michigan State University. He said:

> A conglomerate giant is powerful, therefore, not because it has monopoly or oligopoly control over a particular market, but because its resources . . . are diversified over many different markets.[9]

Dr. Adams cited Textron, Inc., as an example. Textron began in 1928 as Franklin Rayon Corporation. Presently, Textron has twenty-seven separate divisions and 113 separate plants. It operates in such dissimilar markets as helicopters, chicken feed, chain saws, mailboxes, portable space heaters, workshoes, lawnmowers, paints and varnishes, optical machinery, bathroom accessories, radar antennas and cast iron cookware.[10] It could be described, depending on your point of view towards conglomerates, as either an octopus with tentacles reaching into many markets, or a building with a broad foundation.

Conglomerate diversification into multiple markets produces many of the new aspects of management that affect labor relations. Traditionally, labor unions are craft oriented. A machinist union, for example, generally would not represent chemical workers. Again, using Textron as an example, its organized workers are represented by thirteen separate international unions.[11] Textron would have, as a result, multiple labor contracts. In terms of collective bargaining this is an integral factor.

In collective bargaining, labor pressures management with a threat of strike. In theory, when there is a strike management loses income. But notwithstanding the loss of income, management must also meet overhead costs such as taxes, interest on loans, salaries of non-striking workers, and the costs of repair and maintenance of the means of production. Similarly, certain pressure will bear on the union to negotiate a settlement because the striking workers also have obligations to meet. In the optimum situation, these pressures would place management and labor in an equal bargaining position.[12]

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[9] *Hearings on Economic Concentration Before the Subcomm. on Antitrust and Monopoly of the Sen. Comm. on the Judiciary*, 88th & 89th Cong., 1st & 2d Sess., pt. 1, at 249 (1964-66).

[10] *Id.*

[11] *Portrait of a Few Conglomerate Companies*, IUD Agenda, July, 1967, at 9.

[12] It should be recognized, however, that in each specific collective bargaining situation the economic pressure to settle may not be equal for both sides. One function of a union is to prepare a strike fund to increase its bargaining position. Similarly, wise management dictates some economic preparation or warehouse supply of goods to increase its bargaining position. As a result, one side may have made better preparation

The situation is different, however, for a conglomerate. When a conglomerate has labor problems in one segment of production, the other areas could well remain untouched because of the normally defined jurisdiction of labor unions. Thus if Textron had labor difficulties at its shoe factory, it is unlikely that the shoe union could effect a strike at Textron's feed plant.[13] If the shoe workers struck, the labor union would fear that the shoe division could be subsidized by another division of the parent conglomerate. Although such a subsidization is not easily implemented into practice, there still remains the inescapable conclusion that subsidization could ultimately fortify resistance to the shoe union. Precisely because Textron is in diverse areas of production, the pressure a union could bring to bear with a strike on only one division might have little effect on the overall profit picture.[14] If, instead of a conglomerate Textron were solely a shoe producer, a strike by the shoemakers union could very easily bring more effective pressure to bear upon management by closing down the only source of profit production.

The secondary boycott section of the National Labor Relations Act (NLRA)[15] is the primary reason a union in one segment of production cannot increase pressure on management by striking other segments of the conglomerate. The labor fears of a diversified conglomerate are made less compelling, however, by the restrictive scope of the secondary boycott rule.

The right to picket wholly-owned subsidiaries has been held to not be within the purview of the NLRA.[16] However, this may not always be helpful when dealing with conglomerates. James Ling, in discussing the structure of Ling-Temco-Vought (LTV), stated that conglomerates do not have to wholly own their subsidiaries. In fact, according to Ling, it is not desirable to be a sole owner.[17] LTV, accordingly, "spins off" a minority interest in its subsidiary corporations to get fluid investment capital. Furthermore, a subsidiary which is not wholly-owned can be struck if there is

than the other and be under less economic pressure to reach a labor settlement.

13 Even if the union legally had the power to call a strike, it is questionable that they would have the means to persuade members of a different union to leave their jobs and strike so that the shoe union could increase its bargaining power. Further, the union's ability to call strikes at other subsidiaries is limited by the National Labor Relations Act prohibition of secondary boycotts.

14 This is, of course, assuming that shoe production is not a major item in Textron's overall production. It is possible that effective pressure could be brought if shoe production represented 10% of Textron's profits. The shoe union, however, would find its bargaining position much weaker if Textron's shoe division produced less than 1% of the overall profits, or no profit at all.

15 National Labor Relations Act § 8(b)(4), 29 U.S.C. § 158(b)(4) (1964).

16 Milwaukee Plywood Co. v. NLRB, 285 F.2d 325 (7th Cir. 1960); Madden v. Teamsters Local 743, 36 CCH Lab. Cas. 65,708 (E.D. Wis. 1959).

17 McDonald, *Some Candid Answers from James J. Ling*, FORTUNE, Aug. 1, 1969, at 95.

common ownership and management of the primary and subsidiary companies, and if there is a transfer of work from the struck division to the subsidiary.[18]

It has not yet been determined whether the transfer of funds at less than an arms length loan, from a company to a struck subsidiary would establish the same relationship as the transfer of struck work. It is difficult, however, to see any difference between the two situations. If the transfer of work establishes a close enough relationship to make what normally would be an illegal secondary strike a legal primary strike, it seems ludicrous to contend that just as close a relation is not created by an artificial transfer of funds. In *Teamsters Local 807*,[19] the National Labor Relations Board (NLRB) established that the dividing line between a legal primary and an illegal secondary strike is not a rigid line; rather, it depends upon the facts of each case. If the transfer of struck work ties what normally would be an unrelated subsidiary to another subsidiary's labor dispute, a subsidiary that gives funds to another subsidiary so that it can pay its expenses during a strike seemingly should also be treated as a part of the total labor dispute. Therefore, if a union striking one subsidiary of a conglomerate can establish an artificial transfer of funds from other segments of the conglomerate, it conceivably may not be restrained by the secondary boycott provisions of the NLRA from increasing its pressure on the conglomerate by picketing those segments.

B. The impersonal giants

Another aspect of management that the conglomerate embodies is the possibility of uncontrollable size. This stems from the diversified nature of the conglomerate. If Textron remained in one specialized area of production, its growth would be limited by the federal antitrust laws. As an illustration, if Textron decided to produce only shoes, and as a result acquired only other shoe manufacturers or expanded by internal growth, it eventually would become subject to the antitrust laws.[20]

Conglomerate growth differs, however, because their external acquisitions are from diverse areas of goods and services. Thus it is feared that conglomerates will not fall within the present antitrust laws. *The Wall Street Journal* quoted a,

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[18] Roumell v. Miami Newspaper Printing Pressmen, Local 46, 43 CCH Lab. Cas. 25,516 (E.D. Mich. 1961); Bachman Mach. Co. v. NLRB, 266 F.2d 599 (8th Cir. 1959); J.G. Roy & Sons Co. v. NLRB, 251 F.2d 771 (1st Cir. 1958); Schauffler v. District 65, Retail, Wholesale & Department Store Union, 33 CCH Lab. Cas. 95,737 (E.D. Pa. 1957); Alpert v. United Bhd. of Carpenters & Joiners, 143 F. Supp. 371 (D. Mass. 1956).

[19] Teamsters Local 807, 90 N.L.R.B. 41 (1950).

[20] *See* Clayton Act § 7, 15 U.S.C. § 18 (1964); Sherman Antitrust Act § 2, 15 U.S.C. § 2 (1964).

'Washington lawyer who's an expert in antitrust cases as claiming that under present laws federal agencies can't do much about halting the conglomerate mergers; they can only proceed against consolidations of competing companies. Bigness alone is not illegal.'[21]

Referring to LTV's acquisition of Jones & Laughlin Steel, I.W. Abel remarked: "This is believed to be the largest cash offer for any company's stock in history—$425 million. Just for comparison with that $425 million the net worth of the Steelworkers is about $21 million, and that includes the kitchen sink."[22] While Abel's implication that labor should have nearly equal assets to those of management is probably no more than propaganda, as a result of conglomerate merger, labor might be faced with management of unprecedented growth potential. This has presented labor with the problem of dealing with what they consider to be, "impersonal giants, empires of finance and and manipulation. . . ."[23]

Labor has reacted strongly to this new aspect of management created by the conglomerate. I.W. Abel again was a spokesman for labor in a letter to the Federal Trade Commission opposing a merger between Peabody Coal Company and Kennecott Copper Corporation. He said:

The merger of a giant copper company and a giant coal company conjures up possibilities of financial manipulations with the vitality of the communities and lives of its residents as mere pawns in corporate power moves.[24]

Labor's reation to the prospect of "impersonal giantism" has frequently been emotional. A recent issue of a labor newspaper referred to conglomerates as:

a shark that profitably gobbles up smaller fish in the industrial world—is unresponsive to every responsibility except that of profit. Work force security, product quality, market stability, free enterprise competitiveness—all are meaningless to the appetite of the conglomerate shark.[25]

C. Removal of bargaining authority

A problem which frequently confronts labor is the removal of labor policy-making power from a local plant. This problem is compounded by a conglomerate structure. Labor fears the situation in which labor policy is potentially made in conglomerate headquarter offices before the commencement of local plant bargaining. Labor at each plant, therefore, would be bargaining with local management already locked into a series of guidelines from which they could not deviate.[26] This would leave "union officials acting

21 Labor, Sept. 30, 1967, at 8, col. 1.

22 Steel Labor, June, 1968, at 9, col. 2.

23 Labor, Feb. 17, 1968, at 3, cols. 6-7.

24 B.N.A. ANTITRUST & TRADE REG. REP. No. 341, at A-15 (Jan. 23, 1968).

25 Oil, Chem. and Atomic Union News, Aug., 1969, at 12, col. 1-2.

26 This problem may have arisen in the 1965 bargaining between the Chauffeurs, Warehousemen and Helpers Local 876 and Caroline Farms Division of Textron, Inc. [163 N.L.R.B. 854 (1967)]. Negotiations begun on July 9, 1965 were terminated on September 14, 1965 when Local 876 struck Caroline Farms. On Sep-

in a vacuum and unable to contact those who could negotiate meaningfully."[27]

Although local labor policy making can be removed in any corporate-labor negotiation, there is greater likelihood that a conglomerate will resort to this device. In negotiating with conglomerates, the union cannot legally draw bargaining power from partially owned subsidaries that it does not represent. Management, on the other hand, can draw strength from all its divisions.

In spite of the good faith bargaining requirements of the NLRA,[28] it is generally acknowledged that for years General Electric (G.E.)[29] has used

tember 23, 1965, the strike ended upon the parties formulation of a preliminary agreement on all substantive items. Before this agreement could be formalized, however, a new principal negotiator entered the bargaining for Caroline Farms. Upon his appearance, Caroline Farms, in effect, repudiated the agreement. The NLRB Trial Examiner determined:

> [T]hat except for the technical drawing of a collective bargaining agreement . . . negotiations were practically complete. It was only the disappearance of . . . the attorney who had been leading negotiations for [Caroline Farms], and the entrance of [the new principal negotiator] upon the scene, that caused the erasure of all prior negotiating efforts and results from the blackboard. *Id.* at 862.

The NLRB held Caroline Farms had violated Section 8(a)(1) and 8(a)(5) of the NLRA [28 U.S.C. § 158(a)(1), (5) (1964)] by failing to bargain in good faith. Although not considered by the NLRB, this situation might well have been caused by Textron's abuse of its inherent conglomerate power. One can surmise at least two possibilities of conglomerate interference with local bargaining. The more overt likelihood is that the sudden change in Caroline Farm's position was caused by the arrival of the new principal negotiator with a new labor policy dictated in Textron's central office. As a less patent avenue of conglomerate interference, there exists the possibility that the new principal negotiator's sudden appearance resulted from a shift of labor negotiating personnel within Textron's internal structure. Consequently, the new principal negotiator might have had a different concept of a proper labor contract at Caroline Farms. Furthermore, as an outsider, he may have lacked familiarity with the conditions at Caroline Farms.

Another possibility is that the new principal negotiator's sole negotiation experience might have been in a part of the country (such as the South, as was the case here) where a labor contract similar to Caroline Farm's preliminary agreement would have been unreasonable.

These suppositions illustrate the manner in which a conglomerate could affect labor negotiations at the local level. Without a conglomerate structure it might be alleged that Caroline Farms would not have changed principal negotiators in the midst of negotiations. Further, in the absence of other instructions it is also unlikely that if such a change were made that the new principal negotiator would find the preliminary labor agreement so distasteful that it would require repudiation. Conglomerate ownership may enhance the possibility of sudden change in bargaining personnel and increase the possibility of radical and sudden change in the subsidiary's position towards labor.

27 Goodfader, *supra* note 3, at 28.

28 National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1964).

29 Although G.E. is not generally regarded as a conglomerate, its conduct in these labor negotiations graphically illustrates the potential for abuse in removing policy determinations from the local level. The writer's research has yielded no similar situations involving more typical conglomerates so strikingly illustrative of this result.

a set of uniform standards for collective bargaining at its local plants.[30] While it is not clear that the G.E. bargaining teams were locked in and thereby unable to deviate from this policy, such a posture could be very difficult to factually establish. Each of the G.E. negotiators could be informally locked in. For example, each G.E. negotiator would know that the same labor policy had been presented to every other G.E. negotiator. The negotiator also would recognize that his success or failure would be measured by how closely his labor contract coincides with the established guidelines. As a result, his negotiations might not involve a good faith effort to bargain with just one union at one plant, but may become an attempt to force a local union to accept a national labor policy that may have no good faith application to that union or that plant.

A labor source stated:

> More and more, as big companies swallowed up little companies, as corporations sought to spread their activities over more and more diverse fields, and as management became centralized ever higher in the corporate chain of command, it became harder and harder for union negotiators to entice responsible management to the bargaining table.
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> . . . .
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> Unions at the plant level often found they were dealing with messengers, who had to refer decisions 'upstairs,' and these stairs were closed to labor.[31]

Unions also see valuable interpersonal relationships threatened by conglomerate takeovers. Over the years stewards and local labor officers establish working relations with their company supervisors. Labor representatives can more easily bargain with management supervisors who have personal knowledge of the needs of the workers in the local plant. After a conglomerate takeover labor could be bargaining with unknown men from an unknown corporation. While it is true that old friends were once new strangers and therefore this labor fear may not always be valid, in a conglomerate takeover there is often a complete change in the personnel of the management bargaining team. On the other hand, within a traditional company the introduction of new personnel to the bargaining team would not be on a complete scale and some uniformity of personnel would likely be maintained.

In summation, with conglomerates, labor is presented with the possibility of true management being distant from the bargaining table. It is also possible, notwithstanding the NLRA, that the representative of management could be burdened with an overall labor policy, created in the offices of the conglomerate, from which he could not deviate.

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30 INTERNATIONAL LABOR PRESS ASS'N, COORDINATED BARGAINING 5 (pamphlet); *see also* Trial Examiner's Decision at 7, General Elec. Co., Case No. 2-CA-10,991 (Oct. 23, 1968) (173 N.L.R.B. No. 46); General Elec. Co. v. NLRB, 412 F.2d 512, 518 (2d Cir. 1969).

31 Goodfader, *supra* note 3, at 29.

IV. What Effect on Labor-Management Bargaining Relations Should Conglomerate Management Have?

A. Countervailing power

"Collective bargaining is primarily a pressure game."[32] In the American concept of labor-management relations, both sides have distinct bargaining powers. The union can withhold labor by striking. Management, subject to restrictions, can withhold employment through lockouts.[33] Theoretically, under this system, both sides will have to compromise and "justice" of sorts will have been accomplished. This is the labor market equivalent of the consumer market concept of countervailing power.[34] According to this concept, in a smoothly running exchange market, both the seller of either labor or goods and the consumer of either labor or goods should possess equal power. While serious doubts have been raised as to whether this is a valid concept for protecting the best interest of the public,[35] both labor and management publications indicate fear of increased leverage on the other side creating an imbalance of power. One management publication said:

> [T]he growing power of large labor unions has upset the equality of bargaining leverage, which is an essential element of free collective bargaining. Bargaining can hardly take place when unions can virtually dictate settlement terms . . . [36]

It is also clear that labor has a similar concern over conglomerate managerial power. I. W. Abel told a recent Industrial Union Department convention:

> Effective collective bargaining, realistic collective bargaining, depends upon some semblance of equality at the bargaining table. There has been a growing concentration of corporate wealth, as signified in the creation and growth of conglomerates. And I say that this constitutes a real threat to the collective bargaining process. It does so because it tilts the balance scales in favor of industry.[37]

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[32] G. Stocking, Workable Competition and Antitrust Policy 6 (1961).

[33] Management can employ the lockout device under three conditions: 1) to prevent unusual economic hardship, 2) to counter union whipsawing tactics, and 3) to use as an offensive weapon after an impasse has been reached in bargaining. *See generally* BNA Lab. Rel. Rep. at LRX 531 (1966).

[34] *See generally* J.K. Galbraith, American Capitalism: The Concept of Countervailing Power (1952); Galbraith, *Countervailing Power*, 44 Am. Econ. Rev. 1 (Papers & Proceedings 1954).

[35] Sitgler, *The Economist Plays with Blocks*, 44 Am. Econ. Rev. 7 (Papers & Proceedings 1954); Miller, *Competition and Countervailing Power: Their Roles in the American Economy*, 44 Am. Econ. Rev. 15 (Papers & Proceedings 1954).

[36] G. Farmer, Collective Bargaining in Transition 9-10 (1967). This is classified as a management publication as it is published by the Industrial Relations Counselors, Inc., which is composed mainly of corporate executives. Among the members of the board of trustees are the chairman and vice chairman of Armco Steel Corp., a director of E.I. du Pont de Nemours & Co., a Westinghouse vice president, the president of Mobil Oil Corp. and the president of B.F. Goodrich Co. Again, it is cautioned that no one voice speaks *the* opinion of management and that this is offered only as a representative statement.

[37] 1 BNA Lab. Rel. Rep. 72:151 (Oct. 6, 1969).

Abel seems to believe the solution to the asserted imbalance of power created by the conglomerate merger is inter-union cooperation. According to Abel, in self-defense the unions may have to adopt " 'sweeping structural reform' resulting in conglomerate unions."[38] The Industrial Union Department of the A.F.L.-C.I.O. as a result, was organized to coordinate the cooperation or conglomeration of unions. The vehicle of this change is what the Industrial Union Department calls "coordinated bargaining".

B. The case for coordinated collective bargaining

Coordinated bargaining, according to an Industrial Union Department publication, would bring together the unions representing the organized workers of a conglomerate to compare information on problems of mutual concern. "Then, ideally, these unions work together on contract negotiations to ensure the greatest possible use of their combined knowledge and numbers."[39]

Through the exchange of information, the Industrial Union Department would hope to ascertain and then prevent a conglomerate, which bargains with many unions, from battering down the resistance of the weakest union and thereby obtain terms that become a pattern for settlement with all other unions.[40]

Organized labor claims G.E. has long taken advantage of a labor communication gap:

> At contract time, scores of separate negotiations were carried on in cities from coast to coast. Management spokesmen . . . reported in detail to New York after each bargaining session. All GE locations are connected by the finest teletype network money can buy. Union negotiators, in contrast, were totally isolated. They not only were uninformed about the progress of talks elsewhere; they were seldom aware that the other meetings were being held.
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> GE combined its total communications dominance with its knowledge of union rivalries to achieve contracts which, in effect, represented the minimum terms that the weakest union local would accept. This divide-and-conquer technique was effectively applied even among local unions of the same international.[41]

A second aspect of coordinated bargaining, that of working together on contract negotiatons, would enable all unions within a conglomerate to form a common bargaining front. This would allow all individual unions to deal with a conglomerate on an equal basis.[42]

Management has resisted the use of coordinated collective bargaining.[43] The Oil, Chemical and Atomic Workers International Union (O.C.A.W.), in

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38 *Id.*

39 Goodfader, *supra* note 3, at 28.

40 Conway, *supra* note 6, at 22.

41 COORDINATED BARGAINING, *supra* note 30, at 5-6; *see also* General Elec. Co., 1968-2 CCH NLRB Dec. 25,417, 25,418 (173 N.L.R.B. No. 46).

42 Oil, Chem. & Atomic Union News, *supra* note 25, at col. 5.

43 This was indicated by the bargaining between G.E. and the I.U.E. in General

negotiations with Union Carbide,[44] attempted to use coordinated collective bargaining. The O.C.A.W., in connection with these negotiations, asserted that management opposed coordinated bargaining because it wished to keep the unions large in number and divided in power. Management, it claimed, had always wanted to bargain with the largest number of units possible; the ideal being bargaining with each worker individually as it does when there are no unions.[45]

C. The case against coordinated collective bargaining

Union Carbide disagreed with the O.C.A.W. analysis. It stated, in effect, that the coordinated bargaining plan was nothing more than an attempt to increase the power of national unions at the expense of local unions.

> This is pure propaganda—designed to persuade the local plant union members to surrender their right to make a personal decision to a few key union officers—to the aggrandizement of International unions' and IUD's bargaining power.[46]

The Industrial Relations Counselors, Inc., a pro-management organization, has published a monograph which has described coordinated collective bargaining as "national crisis bargaining."[47] The monograph stated that coordinated collective bargaining would create such an imbalance of power that the union would no longer have any incentive to compromise. National strikes were foreseen which could, at the expense of the public, cripple a nationwide company with the ultimate result being the extraction of inflationary wage increases as the only price of labor peace.[48]

The G.E. situation was cited as an example. As management states the case, in 1966, G.E.'s 150 locals, affiliated with eight different internationals, were organized by the Industrial Union Department for coordinated collective bargaining. This coalition represented half of G.E.'s 190,000 employees. The coalition's stated goals of profit sharing and raising G.E.'s wages and benefits to a parity with the rest of the industry, were conceded to be "laudable and traditional trade union goals."[49]

> What was new was the organization of a power bloc to wrest concessions from GE . . . through the use of the combined ability of all of the unions to create a strike emergency, national in scope, whose terminal and deciding point would

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Elec. Co., 1968-2 CCH NLRB Dec. 25,417 (173 N.L.R.B. No. 46), *enforced*, 412 F.2d 512 (2d Cir. 1969).

[44] Union Carbide is a diversified corporation with interests in batteries, anti-freeze, aero-space and metals among other goods.

[45] OIL, CHEM. & ATOMIC WORKERS INT'L UNION, UNION CARBIDE BLACK PAPER (Feb., 1968) (pamphlet).

[46] Address by R. L. Engle, Asst. Dir. of Indus. Relations, Union Carbide, before American Pension Conference, in New York City, Oct. 25, 1967 in UNION CARBIDE BLACK PAPER, *supra* note 45, at 10.

[47] G. FARMER, *supra* note 36, at 31.

[48] *Id.* at 18.

[49] *Id.* at 25-26.

be at the White House.[50]

G.E. refused to meet with the coalition committee and insisted on the right to bargain with the unions individually. Ultimately, G.E. officials walked out from a meeting with the International Union of Electrical Workers (I.U.E.) when representatives of seven other internationals appeared, to G.E.'s surprise, on I.U.E.'s side of the table. The NLRB declared G.E.'s conduct to be an unfair labor practice.[51] However, White House intervention finally caused G.E. to settle with the coalition.[52]

Management summarized the result:

> In retrospect, it seems clear that the union maneuver was a successful one. . . . [C]oalition bargaining was the crucial factor that transformed GE's bargaining from a traditional unit-by-unit pattern to one that can lead more readily to national crisis bargaining, with all of the attendant trappings of a national emergency dispute. The pressures for granting concessions mount in a negotiation on a national scale and they were intensified in this case by the strategic importance of GE as a supplier of essential defense production, not to mention the impact of a GE strike on the economy as a whole.[53]

In conclusion, the case against coordinated collective bargaining is based on the theory that the unions are provided with the power to cripple the economy with massive strikes if their demands are not met. Moreover, it is asserted crisis bargaining results in extorting one inflationary wage increase after another.

D. The NLRB ruling on coordinated collective bargaining

The NLRB has, to a certain extent, upheld the legality of coordinated collective bargaining. In October, 1968, the NLRB finally adjudged G.E. to be in violation of the NLRA by engaging and having engaged in certain unfair labor practices.[54] For many years G.E. had negotiated a national contract with the I.U.E. Agreement was reached through an I.U.E. conference board consisting of delegates from each I.U.E. local in G.E. plants. The conference board then elected a negotiating committee which bargained with G.E. representatives.

I.U.E.'s initial attempt at coordinated collective bargaining, which resulted in White House intervention, began in 1965, when the I.U.E. joined with a number of other international unions who dealt with G.E. They formed the Committee on Collective Bargaining to organize coalition bargaining with G.E. The committee attempted to meet with G.E. repre-

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[50] *Id.* at 26.

[51] General Elec. Co., 1968-2 CCH NLRB Dec. 25,417 (173 N.L.R.B. No. 46).

[52] Settlement was suddenly reached in order to avoid a threatened Taft-Hartley injunction. A White House mediation panel aided the parties in reaching their agreement. N.Y. Times, Oct. 15, 1966, at 1, col. 5.

[53] G. FARMER, *supra* note 36, at 28-29.

[54] General Elec. Co., 1968-2 CCH NLRB Dec. 25,417, 25,419 (173 N.L.R.B. No. 46).

sentatives, but G.E. refused on the basis that the committee was a means employed to engage in coalition bargaining.[55]

Finally, in April, 1966, the I.U.E. conference board, informed G.E. that it was abandoning its request for joint discussions. On this basis G.E. agreed to meet with the I.U.E. negotiating committee on May 4, 1966, prior to the opening of formal negotiations. At the appointed time, G.E. walked out from the bargaining session when it was discovered that the I.U.E. had included in its negotiating committee certain non-voting members, each wearing lapel buttons indicating they were representatives from each of the other international unions.[56] G.E. continued to refuse to negotiate until August 18. By that time, however, the I.U.E. had filed proper notice (pursuant to the provisions of the contract then in effect) of intent to terminate the current contract and requested a meeting on August 15, 16 or 17. G.E. responded that it would meet only if the non-voting members were not present. The NLRB Trial Examiner determined that this conduct was in violation of Section 8(a)(5) of the NLRA[57] as a refusal "to meet with the Union both before and after bargaining was required by the collective bargaining contract of the parties."[58]

A collateral issue to the coordinated bargaining problem concerned when, if ever, G.E. was obligated to meet with the I.U.E. It is clear that any action of the NLRB against G.E. for failure to meet with the I.U.E. would be without basis if G.E. were never under any obligation to meet. On this issue, however, both the NLRB[59] and the Second Circuit[60] held that a refusal by G.E. to meet with the I.U.E. was during some period in which G.E. was contractually obligated to bargain.[61]

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55 *Id.* at 25,418.

56 *Id.*

57 29 U.S.C. § 158 (1964). This section provides in part:

(a) It shall be an unfair labor practice for an employer—

. . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title.

Section 159(a) provides for direct adjustment of grievances between employer and employee as long as any agreement is not inconsistent with the collective bargaining agreement.

58 General Elec. Co., 1968-2 CCH NLRB Dec. 25,417, 25,419 (173 N.L.R.B. No. 46).

59 General Elec. Co., 1968-2 CCH NLRB Dec. 25,417 (173 N.L.R.B. No. 46).

60 General Elec. Co. v. NLRB, 412 F.2d 512 (2d Cir. 1969).

61 Pursuant to the contract then in effect, the parties could voluntarily enter into negotiations prior to the date of mandatory bargaining. The NLRB held that G.E.'s voluntary agreement to a reopening of the labor contract was not made conditional upon the presence of only representatives of the I.U.E.

The Circuit Court, however, modified the NLRB decision on this issue. They found G.E. had properly limited its agreement to voluntary bargaining so that it was under no obligation at that time to meet with the I.U.E. when representatives of other

The principal contention made by G.E. was that its walkout and refusal to meet with the I.U.E. was justified because the union planned to engage in coalition bargaining. G.E. was directly challenging this method of bargaining as an unfair labor practice. But the NLRB refused to consider such a broad issue.[62] The decision stated that the purpose of the I.U.E. could be determined only by G.E.'s doing what it chose not to do—by staying and bargaining in order to determine whether the I.U.E. had come to negotiate only for its own agreement.[63]

The NLRB declared:

> For this reason, we need not decide whether [G.E.'s] refusal to bargain might have been justified if, in fact, the participating unions had been 'locked in' to a conspiratorial understanding. By walking out of the May 4 meeting, [G.E.] precluded our consideration of this issue. Nor need we decide whether [G.E.] could lawfully have suspended negotiations if, during the course of the discussions, it became apparent that the non-IUE representatives were seeking to bargain for their own unions, rather than for the IUE. These situations raise questions which are not presented by the instant case. In this case, we are only called upon to decide whether the mere presence on the IUE Negotiating Committee of representatives from unions other than the IUE justified [G.E.'s] refusal to bargain, there being no evidence that these representatives bargained in bad faith or for employees other than those represented by the IUE.[64]

The above quoted language, as it relates to the right of the non-I.U.E. representatives to bargain for their *own* unions, is in apparent conflict with the board's subsequent inference that G.E. would not have been guilty of an unfair labor practice, had G.E. remained, and had the I.U.E. not come to negotiate *only* for its own agreement.[65] It is likely, however, that the board did not actually intend to consider this question because its statement regarding the effect of the I.U.E.'s not negotiating only for its own agreement was dicta taken from a quotation found in an earlier case.[66]

In referring to Section 7 of the NLRA,[67] the NLRB held that G.E. would

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unions were present. Both the NLRB and the Second Circuit agreed that G.E. had no such excuse for its later refusal to meet at the stipulated time for mandatory bargaining. 412 F.2d 512, 520-21 (2d Cir. 1969).

[62] General Elec. Co., 1968-2 CCH NLRB Dec. 25,417, 25,419 (173 N.L.R.B. No. 46).

[63] *Id.*

[64] Id. at 25,419-20.

[65] *See* text accompanying note 63 *supra.*

[66] McLeod v. General Elec. Co., 257 F. Supp. 690, 706 (S.D.N.Y. 1966). In this case, the NLRB sought and obtained a temporary injunction compelling G.E. to bargain with the Committee on Collective Bargaining.

[67] 29 U.S.C. § 157 (1964). This section provides:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

have been justified in breaking off negotiations when it did only if faced with union representatives who were "so tainted with conflict or so patently obnoxious as to negate the possibility of good-faith bargaining."[68] This is consonant with Section 7 because the right of employees to bargain collectively through representatives of their own choosing is not an absolute right.[69] But noting that if this applied to the presence of non-union personnel in a bargaining committee it would substantially limit the opportunity for collaboration and cooperation between unions, the NLRB held:

> [T]o recognize the possibility of abuse is quite different from concluding . . . that abuse is inherent in any attempt at coordinated bargaining. We do not believe that the mere possibility of such abuse, without substantial evidence of ulterior motive or bad faith, justifies qualification of a union's right to select the persons who will represent it at the negotiating table.[70]

The NLRB, in effect, allowed coalition among unions to the limited extent that representatives from other unions, may be present during bargaining by the principal union. The NLRB was silent as to what extent, or indeed, if the outside unions could participate in the bargaining. However, the board did hold that G.E. could have refused to bargain with the coalition upon a clear showing that one or more of the representatives were "so tainted with conflict or so patently obnoxious as to negate the possibility of good faith bargaining."[71] This would seem a difficult burden to meet. The issue was not reached as to whether unions whose contracts expire at the same time could join together, over the objection of management, and compel management to bargain for one contract.

Only on a collateral issue, concerning what date G.E. had violated the NLRA, did the Second Circuit[72] disagree with the NLRB decision.[73]

In declaring the employees have a fundamental right to choose their own representatives under the NLRA the court sustained the NLRB position. But noting that there are exceptions to this right the court said:

> Thus, in arguing that employees may not select members of other unions as 'representatives of their own choosing' on a negotiating committee, the Company clearly undertakes a considerable burden, characterized in an analogous situation in NLRB v. David Buttrick Co., 399 F.2d 505, 507 (1st Cir. 1968), as the showing of a 'clear and present' danger to the collective bargaining process.[74]

The court perceived many valid reasons for a union to secure aid from outsiders. The court said: "[W]e are told a union has an interest in using experts to bargain, whether the expertise be on technical, substantive mat-

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68 General Elec. Co., 1968-2 CCH NLRB Dec. 25,417, 25,420 (173 N.R.L.B. No. 46).

69 *Id.*

70 *Id.* at 25,420-21.

71 *Id.* at 25,420.

72 General Elec. Co. v. NLRB, 412 F.2d 512 (2d Cir. 1969).

73 *See* note 61 *supra.*

74 General Elec. Co. v. NLRB, 412 F.2d 512, 517 (2d Cir. 1969).

ters or on the general art of negotiating."[75]

G.E. contended that the NLRB ruling was an attempt to adjust economic power. In rejecting this contention the court recognized that it is a normal goal of both labor and management to increase their bargaining strength, but that the Board's application of an old policy to a new situation is not invalid merely because it affects bargaining positions.[76]

On the basis of these NLRB and Circuit Court decisions, a labor union may enter the bargaining sessions accompanied by persons not affiliated with the principal union in order to negotiate for a single contract. It is not settled, however, whether unions may negotiate together and compel management to accept multiple contracts. Nor did the decisions focus on the issue of whether labor unions within a conglomerate can compel the conglomerate to bargain with all unions at one time for a single labor contract.

E. Changes in labor relations—A remedy for conglomerate bargaining power.

One purpose of the NLRA is to enable employees to come together and select a committee to bargain collectively with their employer.

> It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.[77]
>
> * * *
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing. . . .[78]

While this right is not unlimited it represents the embodiment of congressional policy towards labor relations. In order to maintain this policy, when a new development such as conglomerate growth alters the labor-management picture, the nature of collective bargaining should evolve to preserve the purpose of the Act. We must be mindful, however, that the right of employees to come together and bargain collectively should not be implemented to subordinate the rights of management.[79]

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[75] *Id.* at 518.

[76] *Id.* at 519.

[77] National Labor Relations Act § 1, 29 U.S.C. § 151 (1964).

[78] *Id.* § 7, 29 U.S.C. § 157.

[79] National Labor Relations Act § 1, 29 U.S.C. § 151 (1964) states:

> Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of com-

Unquestionably, the conglomerate corporation presents to labor a new form of management. This is seen in the conglomerate's diversified nature caused by its spreading over many different industries and unions, its potential for removal of management bargaining authority from the local level, and the possibility of uncontrollable size. Accordingly, the collective bargaining process should be altered so as to enable labor to bargain on a parity with a conglomerate employer.

Labor demands the right to use coalition bargaining; management resists any change on the grounds that this would grant labor the power to destroy a company or the economy. Resolution of this dilemma seemingly is found in the underlying purpose of the NLRA. Fundamentally, the Act provides that the employees have a right to bargain together in the labor market and sell their services to their employer.

Labor, it will be recalled, fears conglomerate management because the conglomerate could conceivably use its diversity and size to break a strike at one subsidiary by transferring funds from another, and remove to a distant office all significant decision and policy making. Since in each of these situations central management is actually managing the subsidiary by shifting funds and formulating labor policy traditionally made by local management, the conglomerate has arguably become the direct employer of each subsidiary employee because it has chosen to exercise the power of such a position. Again, the labor policy of G.E. serves as a clear example. It is recognized that the same, or nearly the same, offer emanating from a central source is made to each union with which G.E. deals.[80]

In such a case, therefore, coalition bargaining would serve to not only protect the employees' rights, but it would also be harmonious with stated

merce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

[80] The Second Circuit in General Elec. Co. v. NLRB, 412 F.2d 512, 518 (2d Cir. 1969), stated:

> The Company has in the past made effective use of its own ability to plan centralized bargaining strategy in dealing with the various unions representing its employees while keeping the actual bargaining with each union separate.

The court continued, quoting Judge Frankel in McLeod v. General Elec. Co., 257 F. Supp. 690, 694 (S.D.N.Y. 1966):

> [T]he practice is to formulate a set of national company proposals for presentation to the IUE and the UE, two of the three unions with which there is bargaining on a national scale. Before these proposals are presented to the unions, the Company's employee relations managers are called to the New York main office, where copies are given and explained to them. The Company then presents the proposals to the IUE and UE. Normally within a day or two thereafter * * *, upon instructions from New York headquarters, the same proposals are given by the local managers to the local representatives around the country of all the varying unions with which the Company deals on a so-called local basis * * *. At the same time, and commonly before the unions have announced their acceptance or rejection, the uniform set of proposals is publicized to the Company's employees. This mode of centralized administration, despite the multiplicity of bargaining units and representatives, is rendered feasible in part because the Company's collective agreements, with an insignificant number of exceptions, have uniform expiration dates.

NLRA policy of allowing employees to bargain together with their employer.

On the other hand, the conglomerate could choose to not exercise these powers over its subsidiaries and thereby eliminate the possibility that it might be regarded as the employer of each subsidiary employee. Indeed, conglomerates frequently profess that their subsidiaries are autonomous.[81]

It follows, therefore, that if the conglomerate is merely a "paper holding" organization there would exist no policy grounds under the NLRA to permit the subsidiary employee to bargain with central conglomerate management. Each subsidiary would remain the functional employer and the proper entity under the policy of the NLRA, with whom labor should bargain.

The NLRA definition of employer is not very helpful.[82] An employer, for the purpose of labor relations policy making, should be definied as the highest organizational entity in a business structure [excluding the organizations listed in NLRA Section 2(2)] which exercises managerial and decision making powers concerning the labor force. Such a definition would be within the spirit of the NLRA which apparently did not make provision for the impact of the congolmerate on labor relations. Under this approach employees could join together as they wish, regardless of union, plant or trade distinctions and bargain collectively with their true "employer". Accordingly, coordinated collective bargaining would be commensurate with the realities of ownership and control. The inequities in bargaining position created by the conglomerate structure would be eliminated and labor would not be granted unnecessary power.

In *NLRB v. Hearst Publications, Inc.*,[83] the United States Supreme Court interpreted the NLRA usage of "employer" and "employee" to mean more than the common law definitions of these terms.[84] The Court said:

> In this light, the broad language of the Act's definitions, which in terms reject conventional limitations on such conceptions as "employee," "employer," and "labor dispute," leaves no doubt that its applicability is to be determined broadly, in doubtful situations, by underlying economic facts rather than technically and exclusively by previously established legal classifications.
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> . . . That term [employee], like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relationship. 'Where all the conditions of the relation require protection, protection ought to be given.'[85]

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81 MacDonald, *supra* note 2, at 20.

82 National Labor Relations Act § 2(2), 29 U.S.C. § 152(2) (1964) provides:

> The term 'employer' includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

83 322 U.S. 111 (1944).

84 *Id.* at 128.

85 *Id.* at 129.

Hearst was relied upon in the subsequent decision of *NLRB v. E.C. Atkins & Co.*[86] The Court declared that Congress, in formulating the NLRA, purposely avoided delineating precise definitions for "employer" and "employee".[87] The Court further stated:

> As we recognized in the *Hearst* case, the terms "employee" and "employer" in this statute carry with them more than the technical and traditional common law definitions. They also draw substance from the policy and purposes of the Act, the circumstances and background of particular employment relationships, and all the hard facts of industrial life.[88]

V. CONCLUSION

The importance of coordinated collective bargaining is recognized by both labor and management. By the time the NLRB had issued its holding, the parties had already negotiated a new labor contract because a federal district court had issued a temporary injunction compelling G.E. to bargain[89] and because of White House intervention.[90] Consequently, notwithstanding the apparent mootness of G.E.'s prior conduct as it related to the labor contract,[91] the issue of coordinated bargaining was considered sufficiently important for the NLRB to issue a decision condemning G.E.'s action. The importance of the issue is underscored by G.E.'s having appealed the decision to the Second Circuit. Moreover, labor believes it obtained, because of this method of bargaining, a more favorable contract with G.E. than would have been possible under past methods:

> Most labor sources agree that the company would not have made such an attractive offer originally if it had not been faced with an 11-union coalition. The company has obtained cheaper agreements in the past by negotiating with each union separately.[92]

Coordinated collective bargaining can be used to place labor in an equal bargaining position to that of a conglomerate corporation. However, the right to coalition bargaining would bestow additional power on the unions and, therefore, should be limited to those instances where it is necessary to enable labor to bargain meaningfully with its true employer. The func-

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86 331 U.S. 398 (1947).

87 *Id.* at 403.

88 *Id.*

89 McLeod v. General Elec. Co., 257 F. Supp. 690 (S.D.N.Y. 1966).

90 *See* note 52 *supra.*

91 The reaching of an acceptable contract between the parties seemingly would end the controversy between them. However, the NLRB Trial Examiner found the issue was not moot because G.E.'s conduct indicated that it would engage in future coordinated bargaining sessions only if under compulsion to do so. Trial Examiner's Decision at 25, General Elec. Co., Case No. 2-CA-10,991 (Oct. 23, 1968) (173 N.L.R.B. No. 46).

92 N.Y. Times, Oct. 15, 1966, at 34, col. 5.

tional definition of employer should be expanded to include the distant entity if it controls labor policy and decision making. In this manner, the NLRA's policy of allowing employees to bargain collectively with their employer will be fulfilled even within a conglomerate corporation.

Richard Anthony Smith